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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/730,628	12/05/2000	Edward Cumming	MEWBP001	9458
25920	7590	05/17/2005	EXAMINER	
MARTINE PENILLA & GENCARELLA, LLP 710 LAKEWAY DRIVE SUITE 200 SUNNYVALE, CA 94085			EREZO, DARWIN P	
			ART UNIT	PAPER NUMBER
			3731	

DATE MAILED: 05/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/730,628

Applicant(s)

CUMMING, EDWARD

Examiner

Darwin P. Erez

Art Unit

3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 August 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 2 and 4-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 20, 29 and 30 is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-8, 15, 18 and 21-24 is/are rejected.
- 7) ☒ Claim(s) 9-14, 16, 17, 19 and 25-28 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, 4-8, 15, 18 and 21-24 are rejected under 35 U.S.C. 102(b) as being anticipated by US 5,111,809 to Gamble.

(claims 1 and 21-23) Gamble teaches a breathing circuit comprising a mouthpiece **18** (col. 3, lines 1-3), at least one gas carrying conduit (col. 3, lines 38-43), a compressed gas source **120**; and a counterlung including a primary chamber **20** and a secondary chamber **34**; wherein inflation of the secondary chamber causes inflation of the primary chamber (col. 4, lines 40-46), wherein the compressed gas source is in communication with the counterlung via the breathing circuit; and wherein the counterlung includes means for assisting expansion of the counterlung (via the flow of oxygen into the secondary chamber) and means for assisting contraction **52** of the counterlung.

(claim 2) Gamble teaches valves **24**, **26**, which selectively activate one of the means for assisting expansion of the counterlung and the means for assisting contraction of the counterlung depending on the respiratory phase of the user.

(claims 4 and 5) Gamble teaches the means for assisting expansion associated with the secondary chamber, wherein the means for assisting expansion comprises a flow of the compressed gas source (col. 4, lines 47-66).

(claims 6 and 7) Gamble teaches the means for assisting contraction is associated with the primary chamber (through platen **42**) and wherein the means for contraction is a spring **52**.

(claims 8 and 24) Gamble teaches the secondary chamber formed within the primary chamber.

(claim 15) Gamble teaches an exhaust valve **54**.

(claim 18) Gamble teaches a carbon dioxide scrubber **30**.

Allowable Subject Matter

3. Claims 20, 29 and 30 are allowed.
4. Claims 9-14, 16, 17, 19 and 25-28 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

5. Applicant's arguments filed 08/18/03 have been fully considered but they are not persuasive.
6. In response to applicant's arguments that Gamble fails to teach the means for assisting expansion of the counterlung, it should be noted that the secondary chamber

34 of Gamble is directly connected to the oxygen supply system 14 via oxygen inlet line 36. The connection between the oxygen supply system and the secondary chamber is void of any valves. In fact, Gamble states the pressure provided by the oxygen supply system prevents oxygen from flowing back from the secondary chamber (col. 4, line 66 – col. 5, line 5). Therefore, gas is delivered to the secondary chamber under pressure, which would assist the expansion of the counterlung. This is equivalent to applicant's own invention, where pressurized gas from the compressed gas source is delivered to the secondary chamber.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darwin P. Erez who whose telephone number is (571) 272-4695. The examiner can normally be reached on M-F (8:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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GLENN K. DAWSON
PRIMARY EXAMINER